

# **WISCONSIN LEGISLATIVE COUNCIL STAFF**

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 95-108**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

### **2. Form, Style and Placement in Administrative Code**

a. In s. NR 120.02 (37), the defined term is the acronym “NRCS,” so this subsection should follow sub. (39) alphabetically.

b. In s. NR 120.02 (50) and other places in the rule, “conservation service” should not be stricken and then recreated. Also, in this subsection and throughout the rule, parenthetical material should not be used. [See s. 1.01 (6), Manual.] If it is necessary to state that the natural resources conservation service was previously the soil conservation service, this should be done in a note.

c. The treatment clause in SECTION 8 should be “NR 120.03 (2) is renumbered NR 120.03 (1) and amended to read:”. This type of change should be made in a number of places in the rule.

d. In s. NR 120.07 (2) (a) 2., “shall” should follow “agencies.”

e. It appears that “shall” is incorrectly underlined in s. NR 120.08 (1) (a) 5.

f. Introductory material should always end in a colon and lead into the subunits that follow. [See s. 1.03 (8), Manual.] For examples of introductory material that is improperly drafted, see ss. NR 120.09 (intro.) and 120.185 (2) (intro.).

g. Subunits following introductory material should end in a period rather than a semicolon or comma or the words “and” or “or.” This will allow for easier insertion or deletion of

subunits at a later time. [See s. 1.03 (intro.), Manual.] For example, see s. NR 120.14 (1) (e) 1. and 2. If this drafting requirement had been followed in the current rule, SECTION 130 would be unnecessary; SECTION 131 would be all that would be needed to create s. NR 120.21 (4) (a) 1. t.

- h. The slash mark in the title of s. NR 120.14 (18) should be replaced by “or.”
- i. The cross-reference in s. NR 120.14 (18) (b) 1. d. should be to “subs. (17), (19) and (20).”
- j. Entire subunits of a rule should not be created by underscoring. [See s. 1.06 (1), Manual.] For example, see s. NR 120.14 (18) (b) 4. c. and d., 5. and 6.
- k. SECTION 108 should be divided into two SECTIONS--one that repeals and recreates s. NR 120.17 (title) and one that repeals s. NR 120.17 (intro.). SECTIONS 146 and 147 also each need to be divided into two SECTIONS.
- l. “Strip cropping” in s. NR 120.18 (1) (b) 2. and 3. must be changed to a hyphenated term by striking both words in the current rule and replacing them, shown by underlining, with the hyphenated term. Also, subd. 4. should be repealed and recreated and subd. 5 should be repealed. Finally, subunits that are not affected by the rule should not be shown; see s. NR 120.18 (1) (c) 1., 2. and 5. to 8.
- m. The initial letter “C” in the reference to “Ch. 458, Stats., and Chs. RL 80 to 86” in s. NR 120.186 (3) (b) 2. should not be capitalized and the hyphen should be replaced by “to.”
- n. “Shall” should be replaced by “may” in s. NR 120.186 (3) (c).
- o. New material should be inserted after stricken material in s. NR 120.21 (4) (a) 1.
- p. What is the purpose of the term “Core urban programs” in s. NR 120.21 (4) (c) 1.? This resembles a title, but this subdivision should not have a title.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

- a. The term “maximum headwater” in s. NR 120.02 (33) is a technical term. Either that term should be defined, or the term “maximum storage capacity” should be defined in the same manner as s. NR 333.03 (11).
- b. The definition of “acquisition cost” in s. NR 120.02 (1) should not refer to “the property.” The rule refers to the acquisition cost of any property, and some other terms, such as “property to be acquired,” should be substituted. Also, this definition is confusing because the first sentence provides that costs “related to” the purchase are included, but the second sentence excludes a series of costs which are arguably related to the purchase of property. A better approach might be simply to list the costs that may be included in the acquisition cost, such as recording fees and appraisal costs, and exclude all other costs related to the purchase of property. Finally, “or” should be substituted for “nor.”

c. A cross-reference to the rules related to areawide water quality management plans should be included in s. NR 120.02 (4).

d. Definitions should use the same part of speech as the term to be defined. For example, “contiguous” in s. NR 120.02 (8) is an adjective, but the definition for that term is a “parcel of land...”, which is a noun. Also, this definition should be reviewed to be sure that it accomplishes the intended purpose. For example, this definition appears to provide that any two parcels of land located on the same lake are contiguous, regardless of the separation distance between the parcels. Also, “may” should be replaced by “does.”

e. The definition of “department approval of a watershed plan” in s. NR 120.02 (17) either should not refer to the “date” on which the letter is signed or a different defined term should be substituted. If “approval” is a verb, it does not correspond with “date,” which is a noun. If “approval” is a noun, it does not make sense to define the department’s approval of a plan as the date on which the plan is approved.

f. The department should review the definition of “designation of critical sites by criteria” in s. NR 120.02 (19) and all places in the rule where this term is used. The rule, taken as a whole, does not give a good sense of what are the elements of a designation of critical sites by criteria and how this designation is used, both procedurally and substantively, to determine which of the actual sites in a priority watershed are to be designated critical sites by use of the criteria.

g. The definition of “highest-ranked critical sites” in s. NR 120.02 (27) should be clarified. Are only critical sites ranked or are all sites in a priority watershed ranked? What is the methodology for ranking: Is it from highest to lowest based on the volume of pollutant contribution? The strength of pollutant contribution? Some other measure? Is the 25% pollutant reduction goal applicable to the total pollutant contribution of all sites in a priority watershed?

h. The defined term “livestock for abandonment purposes” in s. NR 120.02 (31) does not appear to be used anywhere in the rule. Even if this term is used, it is not an acceptable drafting practice to provide that 10 or fewer animals are considered pets if the animals are not of a type that is normally described as a pet. This definition can simply provide that 10 or fewer individuals may remain on abandoned property and that no more than four of the animals may exceed 200 pounds in live weight.

i. The definition of “period of cost-sharing availability for critical sites” in s. NR 120.02 (41) is the 36-month period after the landowner receives a notification or written offer of cost-sharing. However, s. NR 120.09 (2) (a) provides that the verification letter includes a date which is the end of the 36-month period of cost-share availability, which may not be less than 12 months after the landowner receives notification. These two provisions appear to be inconsistent.

j. The department should determine whether a definition of “property” is necessary, as provided in s. NR 120.02 (47). In any case, this definition must be rewritten, because “property” cannot be defined as the form of ownership of the property. However, the department should review how “property” is used in the rule. For example, the term is used in s. NR 120.186 (1) (a) as the acquisition of the “property” or an “interest in property.” This use of the term is not

improved in anyway by the definition and, in fact, the definition creates confusion because an interest in property becomes, as a result of the definition, an interest in fee title ownership in the land. The phrase in s. NR 120.186 (1) (a) is perfectly understandable if written as “real property or an interest in real property” or “land or an interest in land” without any further definition.

k. Section NR 120.04 could be clarified by describing the kinds of advice that may or must be requested from the citizen advisory committee.

l. The provisions on notification of critical sites in s. NR 120.09 refer to the ranking of sites. As described above in the comment regarding the definition of “highest-ranked critical sites,” the rule should include more information regarding the ranking process. Also, the defined term “highest-ranked critical sites” should be used.

m. The provision on verification in s. NR 120.09 (1) could be clarified to indicate, among other things, that the purpose is to verify that individual sites within a priority watershed meet the criteria for a critical site designation.

n. Should s. NR 120.09 (5) (a) indicate who makes the determination that a site no longer meets the criteria for critical sites?

o. Section NR 120.12 (6) should indicate which nonpoint source funds may be used to acquire easements.

p. A form is referenced in s. NR 120.13 (11). Either a copy of the form should be attached to the rule or a statement should be included as a note indicating where the form may be obtained.

q. Section NR 120.14 (1) (e) 2. excludes “dredgings” from best management practices conducted below the ordinary high water mark. Section 144.25 (2) (a), Stats., excludes this activity at any location.

r. In s. NR 120.14 (7) (a) (intro.), the last sentence should state: “These systems include the following:”.

s. “Are defined as” should be replaced with “consist of” in s. NR 120.14 (10) (b) 1. a. Also, in that subdivision paragraph, “and/or” should be replaced by “or.”

t. Is “on” the correct word in the phrase “on an operation” in s. NR 120.14 (10) (b) 1. b.?

u. The material added at the end of s. NR 120.14 (10p) (b) 1. a. should be rewritten in proper, easy-to-understand language. For example, this might be rewritten as: “The establishment of the grazing system permits the abandonment of an animal lot that adversely affects groundwater or surface water.”

v. The definition of “structural height” in s. NR 120.02 (49) is limited to dams. Therefore, this term cannot appropriately be applied to the other types of structures in s. NR 120.14 (12) (b). Also, the term used in s. NR 120.14 (12) (b) 1. b. should be “structural height,” not “structural feet in height.”

w. Is there any reason why s. NR 120.14 (12) (b) 2. c. cannot simply refer to endangering life or “real or personal property”? See also s. NR 120.14 (13) (b) 3. c.

x. In s. NR 120.14 (14) (b) 2. d., “costly” should replace “cost.”

y. What is the effect of recording an agreement between the department and the current landowner as provided under s. NR 120.14 (18) (b) 3.? Nothing in the rule indicates that this agreement is intended to bind future owners of the property. If this is the intent, the rule should state that intent, and the document that is recorded should have that legal effect.

z. What is the meaning of “supporting” in s. NR 120.14 (19) (b) 3. e.? Is this related to the physical support of a building or other structure?

aa. Section NR 120.185 (2) (e) should refer to “property subject to the” easement.

ab. What are the nonpoint source pollution abatement programs referred to in s. NR 120.186 (2) (a)?

ac. The second “of” in s. NR 120.186 (2) (b) should be replaced by “for.” Also, “owner occupants” in that paragraph should be hyphenated.

ad. What are the guidelines for appraisals referred to in s. NR 120.186 (3) (b) 3.? Are these in the form of rules? [See ss. 227.10 (1) and 227.01 (13), Stats.]

ae. If the agreement with a current property owner is intended to bind future owners, is it sufficient to “reference” the interest of the state under the grant contract as provided in s. NR 120.186 (3) (g)? In the alternative, should the interest of the state be established in the legal instrument?

af. What are the “preventive cases” referred to in s. NR 120.186 (5) (f)?

ag. Section NR 120.28 (3) refers to sites that are designated as a critical site in the priority watershed plan. However, the intent of the remainder of the rule appears to be to designate critical sites by criteria in the plan and to verify the designation of actual sites subsequently to development of the plan. This technique for designation of sites does not appear to be consistent with s. NR 120.28 (3).